

**Testimony of Peter K. Nevitt, Chairman of Greenbrier Europe  
Before the  
Senate Foreign Relations Committee  
Subcommittee on European Affairs**

**June 28, 2000**

**I. INTRODUCTION**

Good afternoon, Mr. Chairman, and members of the Subcommittee. Thank you for inviting me to testify this afternoon before this distinguished panel. My name is Peter Nevitt and I am the Chairman of Greenbrier Europe, a subsidiary of The Greenbrier Companies. Greenbrier is one of the largest manufacturers of railroad freight cars in North America.

Greenbrier is headquartered in Lake Oswego, Oregon. Its largest manufacturing facility is in Portland, Oregon where it has 1400 employees. Greenbrier operates additional facilities in the states of Arkansas, Kansas, Texas, California and Washington. Greenbrier also has factories in Canada, Mexico, and Poland, as well as an engineering and design center in Germany. Greenbrier's total sales last year were \$619 million. The company's stock is traded on the New York Stock Exchange.

**II. GREENBRIER DECISION TO INVEST IN POLAND**

In 1997 Greenbrier decided to expand its manufacturing operations to Europe. This decision was based on a desire to serve the European market, including certain American railroad companies that were beginning to invest in Europe. The European market also offered an opportunity to increase U. S. revenues through the export of technical, engineering and design skills.

Greenbrier employment in the United States has been increased to provide support services to Greenbrier's European activities. I should note that it is impossible to export rail cars manufactured by Greenbrier in the United States to Europe because of the high cost of shipping such cars to Europe.

Greenbrier was very particular and selective in determining the country in Europe that offered the best location for the start of its European operations. After careful consideration of all relevant factors, we selected Poland because of its stable government, its geographic proximity to major commercial markets, its commitment to a free and open market economy, its strong relations with its traditional trading partners, and its dedicated, skilled workers. Furthermore, Greenbrier received strong encouragement from Polish government officials to invest in Poland. The Polish government assured Greenbrier that its investment in Poland would be welcome and that Greenbrier would be treated fairly as a Polish company.

After Greenbrier investigated a number of possible factory sites in Poland, Greenbrier opted to acquire the WagonySwidnica factory, located in Silesia, close to the German border. At the time of our acquisition, the factory had little work, few employees, and practically no customers. However, the city of Swidnica and the surrounding area provided a pool of highly skilled workers. Therefore, based on the assurances Greenbrier had received from the Polish government, Greenbrier decided to invest in Poland and acquire a controlling interest in WagonySwidnica.

### **III. THE GREENBRIER COMMITMENT TO WAGONYSWIDNICA HAS BEEN SIGNIFICANT**

Greenbrier took possession of the WagonySwidnica factory on March 9, 1998. Since that time, Greenbrier has:

- Increased the number of employees at WagonySwidnica from 550 (mostly on furlough) to 880 active employees.
- Increased salaries of its workers by nearly 80%.
- Invested heavily in the training of its workers and sent 61 workers to the United States and Canada for additional specialized training.
- Invested an additional \$20 million in the factory to purchase equipment and to improve working conditions for its employees.
- Increased the WagonySwidnica backlog of orders for rail cars from about \$3 million to \$47 million.
- Supported the local community through contributions to local charities and sponsoring local civic functions.

Greenbrier is very pleased with its investment in WagonySwidnica. Our employees at WagonySwidnica are highly skilled and have a solid work ethic. Labor unions representing our workers in Poland have been supportive of our efforts to improve production and increase economic opportunity for all employees.

Under Greenbrier management and with Greenbrier investment, WagonySwidnica has been successful in winning contracts to manufacture and sell rail wagons in Western Europe. (“Rail cars” are referred to as “rail wagons” in Europe.) Our European customers report that the quality of WagonySwidnica products is excellent.

Early this year, Greenbrier acquired the Adtranz freight wagon supplier from Daimler-Chrysler. Adtranz is based in Siegen, Germany, near Frankfurt. This acquisition makes Greenbrier one of the major freight wagon suppliers in Europe and one of Europe’s leading design and engineering centers for freight wagons. As a result of this

acquisition, Greenbrier intends to expand its rail wagon manufacturing in WagonySwidnica and possibly elsewhere in Poland. This acquisition could result in a significant number of additional jobs for Poland, so long as the political and economic environment rewards new investment from companies such as Greenbrier.

Greenbrier exports of rail wagons from Poland provide Poland with much needed foreign exchange. Unlike many foreign investors in Poland that cater exclusively to the internal Polish market, Greenbrier has significant sales to foreign markets. At the same time, Greenbrier expects fair treatment and a level playing field to compete in the Polish market.

#### **IV. GREENBRIER HAS BEEN ARBITRARILY EXCLUDED FROM SELLING RAIL CARS TO THE POLISH NATIONAL RAILROAD, PKP.**

Greenbrier's major disappointment in conducting business in Poland has been the arbitrary action by certain individuals within the Polish state-owned railroad, Polish National Railways (herein called PKP). These improprieties have prevented WagonySwidnica and Greenbrier from building wagons for PKP. This condition, which apparently has been corrected, was unfair to Greenbrier and to its workers at WagonySwidnica. The short history of Greenbrier's initially disappointing relationship with the Polish state-owned railroad, PKP, is as follows:

**A. Conspiracy to Monopolize Sales to PKP:** Certain individuals within PKP conspired to form a consortium to monopolize the sale of rail wagons to PKP. This consortium, known as Consortium Taborowa, is composed of PKP and a number of companies in Poland including three manufacturers of rail wagons. PKP owns about 90% of the stock of this consortium, known as Consortium Taborowa. Certain key PKP officers that control equipment acquisitions by PKP have always been and presently are the principal officers of the Consortium Taborowa. At the direction of these key officers, PKP granted this Consortium Taborowa the exclusive right to issue tenders for rail wagons on behalf of PKP.

**B. PKP awarded an Order for Rail Wagons to its Friends Rather Than Through a Transparent Bidding Process:** In April of 1999, Consortium Taborowa issued a tender for 4500 rail wagons. This tender contained requirements that made it impossible for any bidder to qualify to participate in the tender except for the two rail car manufacturers that were members of the Consortium Taborowa. Furthermore, the bids were reviewed and awarded by officers of PKP who also were officers of Consortium Taborowa, rather than by any independent party. Not surprisingly, the Consortium Taborowa awarded the entire contract for 4500 wagons to its own members. The bidding procedure adopted by PKP in this case did not begin to meet the requirements for transparency required by the United States, the European Union, and the international financial institutions such as the World Bank and EBRD.

**C. Greenbrier's Bid on the Tender Rejected on Arbitrary Grounds:**

Greenbrier attempted, in good faith, to bid on the tender by submitting a bid to the Consortium for 1500 wagons. Greenbrier's pricing was competitive and, in fact, somewhat lower than the pricing offered by the factories that were awarded this work. The requested delivery dates were within the time period requested by the Tender. Greenbrier merely asked for a share of the 4500 wagon order, not the entire order, so that other Polish manufacturers and their workers might share in the contract. Greenbrier's bid was rejected on the grounds that it did not comply with the terms of the tender bid. As noted previously, the terms of the tender made it impossible for any company to qualify other than the members of the Consortium.

**D. Greenbrier Has Appealed the Arbitrary Rejection of its Bid:**

When Consortium Taborowa rejected Greenbrier's bid on grounds designed to disqualify any manufacturer except members of Consortium Taborowa, Greenbrier appealed the decision to the Public Procurement Office. Greenbrier felt it was critically important that it try to protect its workers' jobs. The Public Procurement Office was sympathetic to WagonySwidnica's plight, and critical of the conduct of Consortium Taborowa. The appeal, however, was denied on very narrow grounds concerning the lack of jurisdiction of the Public Procurement Office, because PKP represented that no State funding of the transaction was involved.

During the hearing before the Public Procurement Office, Consortium Taborowa represented that neither the credit of PKP nor the credit of the Polish government would be utilized in financing the 4500 wagons. Since that time, however, the fact has become clear that the 4500 wagons can not be financed without support from either (or) all of the Polish government, PKP, the assignment of PKP receivables, the Consortium (90% owned by PKP), or by some other State corporation. In view of this misrepresentation of facts, further appeal by Greenbrier to the Public Procurement Office is possible and appropriate.

Greenbrier also has argued that the Consortium Taborowa bid award violates the Polish anti-monopoly laws. WagonySwidnica has filed an appeal with the Polish Office for Competition and Consumer Protection, which has commenced an aggressive investigation of this conspiracy.

**V. GREENBRIER APPEARS TO BE ACHIEVING A RESOLUTION OF ITS PROBLEMS WITH PKP**

**A. Intervention by Polish Government Officials Has Blocked the Award of the Rigged Bid and Resulted in Transparency of a New Bid Tender:** I am pleased to report that the intervention of responsible Poland government officials in the bidding procedure followed by PKP appears to have resulted in the cancellation of the tender bid for the 4500 rail wagons. We are told that PKP has no intention of implementing the awards made pursuant to the 4500 rail car tender. We also are told that PKP will issue no further tenders through the Consortium Taborowa. If this is true, Greenbrier is deeply

grateful to those Polish officials who insisted from the beginning that the Consortium Taborowa and its rigged tender should have no role in a modern, market-oriented Poland.

**B. Greenbrier is Bidding on a New Tender by PKP:** Currently Greenbrier is bidding on a new tender by PKP for 1000 freight wagons. I am pleased to report that this bidding procedure appears to be transparent. This bid request, however, contains a number of requirements for financing terms that are not commercially acceptable to anyone in light of PKP's precarious financial condition. To further complicate things, the tender includes a provision that all of the terms of the tender are "non-negotiable," thus precluding even minor changes typically necessary to meet the needs of lenders and lessors. Therefore, in the tender's present form, it is impossible for anyone to file a firm response.

Greenbrier is hopeful that the very stringent requirements of this bid request are due to inexperience rather than intent. Consequently, Greenbrier has asked PKP to eliminate the "non-negotiable" provision from the tender. If that requirement is removed, a bidder can be chosen on the basis of the merits of its bid as to specifications, price and delivery dates subject to final negotiation of financing arrangements. Because of the complexity of the financing and the need to involve third party financial institutions, we believe that such a procedure is the only feasible way to successfully conclude that tender.

**C. Poland has Been Successful in Establishing a System of Commercial Law:** I am pleased to report that Poland has been generally successful in establishing a commercial and legal environment conducive to American investment. The Public Procurement Office and the Office for Competition and Consumer Protection are examples of conscientious agencies that offer protection from arbitrary and abusive conduct.

**D. The Chairman of PKP has Been Particularly Helpful:** The current Chairman of the Management Board of PKP, Mr. Krzysztof Celinski, is a very capable executive. He has been sympathetic to Greenbrier's experience with Consortium Taborowa. However, certain persons within PKP seem to operate independently of supervision. Unfortunately, a large state-owned company such as PKP is difficult for a responsible Polish official to manage effectively, because of the social upheaval a railroad strike would cause. Certain management people within the present structure of PKP sometimes use their ability to ferment labor unrest in order to achieve their own ends.

The PKP situation is further complicated by the fact that the company is hemorrhaging money on a daily basis and needs to be privatized as quickly as possible. Such privatization will require large reductions in personnel. The Sejm, hopefully, will pass the privatization legislation this summer. The Polish presidential election is scheduled for early October and parliamentary elections are expected by March or April

next year. Failure to enact the PKP privatization legislation this Summer probably would delay action until next Spring. Financing for PKP and its freight car orders will be needed before then. We understand that Citibank and Salomon Smith Barney are trying to arrange this financing. The attitude toward this financing by Mr. Bauc, the new Finance Minister, seems favorable, provided that the pending privatization legislation is passed by the Sejm.

## **VI. NUMEROUS UNITED STATES OFFICIALS HAVE COME TO THE AID OF GREENBRIER AND HAVE BROUGHT THE DISPUTE TO THE ATTENTION OF POLISH GOVERNMENT OFFICIALS**

As an American businessman with a major problem abroad, I was immensely surprised and gratified at the assistance Greenbrier received from the United States Government. Both the Legislative and Executive branches made impressive efforts to help prevent an injustice from being inflicted upon our company. Frankly, I had no idea that such assistance was available and Greenbrier is immensely grateful for it.

**A. Congressional Assistance:** When this difficulty first arose just over a year ago, Greenbrier brought the matter to the attention of the fine Chairman of this body, Senator Gordon Smith. Senator Smith and his excellent staff, including, in particular, Rob Epplin and Martha Cagle, worked hard to ensure that the matter was brought promptly to the attention of the Polish Ambassador here in Washington, to the United States Ambassador in Warsaw and to key officials in the Administration that deal with such disputes. He had the matter investigated thoroughly and met repeatedly with the Polish Ambassador to obtain regular updates on the progress of our discussions. He encouraged the Polish government to address the matter promptly and fairly. Senator Smith's credibility at the Polish Embassy and throughout the Polish government was extremely high due to his long-standing friendship with the country and his tireless efforts on behalf of Poland's membership in NATO; throughout this dispute, we heard repeated statements of admiration for the Senator from numerous Polish officials.

Other members of Congress also expressed their willingness to be of assistance, particularly Senators Patty Murray and Max Cleland. We at Greenbrier will always remember the tireless efforts of the Senator from Georgia. He personally engaged the assistance of Vice President Gore, the National Security Advisor, key officials at the Departments of State, Commerce and Defense and made regular contact with the Polish Ambassador here in Washington and the United States Ambassador in Warsaw. Senator Cleland clearly was going to see that Greenbrier was treated fairly in Poland. He never asked for special favors or special treatment; he simply asked that American companies, including Greenbrier, be given an opportunity to compete fairly and openly abroad.

**B. Assistance from the Clinton Administration:** Again, I personally was amazed and gratified by the assistance that Greenbrier received from key representatives of the Clinton Administration. I simply had no idea that our government was so willing to be of assistance to American companies that attempt to seize new business

opportunities abroad. I couldn't possibly name here all of the hard-working individuals that took an interest in Greenbrier's plight, but the following must be noted:

**1. U.S. Department of State:** The assistance that we received from Ambassador Daniel Fried and his excellent staff in Warsaw (including the DCM, Michael Mozur; the Political Counselor, Jeffrey Goldstein; the Economic Counselor, John Hoover) was very impressive. Likewise, we received regular and valuable assistance from then-Under Secretary Stuart Eisenstat and the Poland Desk Officer, Jim Wojtasiewicz.

**2. U.S. Department of Commerce:** We received valuable assistance from Under Secretary David Aaron, Assistant Secretary Patrick Mulloy and Poland Desk Officer, Amy Zona. Their assistance included numerous meetings with representatives of the Polish Embassy and meetings in Warsaw with key Polish officials.

**3. U.S. Department of Transportation:** Secretary Rodney Slater and Federal Railroad Administrator, Jolene Molitoris, were extremely helpful to Greenbrier's efforts to resolve this controversy. They and their key staff (including DOT Chief of Staff, Jerry Malone; Deputy Chief of Staff, Norma Krayem; Associate FRA Administrator, Charles White; and Director of International Policy, Ted Krohn) jumped immediately on this issue and had numerous meetings in Warsaw, Swidnica and Washington, D.C. with key Polish officials. Greenbrier is indebted to the energetic efforts expended in its behalf by these valued public servants.

**4. So Many Others:** Greenbrier received valuable assistance and support from the U.S. Trade and Development Agency (particularly from Director Joe Grandmaison), the Overseas Private Investment Corporation (particularly from Managing Director for Business Development, Joan Edwards) and from the U.S. representatives at the World Bank and European Bank for Reconstruction and Development. The hard work of these individuals was extremely helpful to Greenbrier's efforts to resolve this matter.

## **VII. POLISH GOVERNMENT OFFICIALS HAVE BEEN HELPFUL TO GREENBRIER**

Poland is blessed by the fact that patriotic officials who are concerned with the welfare and future of Poland lead its major political parties. All the major political parties are pro NATO, pro American, pro free enterprise, and anxious to meet the stringent requirements for joining the EU. Whatever political party is in power makes a real effort to place highly qualified individuals in positions of responsibility. Encouraging foreign investment and particularly American investment in Poland is a high priority of these individuals. They are very concerned with the creation of a fair and efficient political environment, the establishment of workable commercial laws, and the dismantling of needless protectionism.

**A. Polish Embassy:** Greenbrier has been extremely gratified by the support it has received from the Polish Embassy here in Washington D.C. Then-Ambassador Jerzy Kozminski was extremely sympathetic to Greenbrier's plight and worked hard to correct it. Greenbrier feels deeply indebted to Ambassador Kozminski and his excellent staff, including Krzysztof Wybieralski, Mariusz Handzlik and Andrzej Dziekonski.

**B. Ministry of Finance:** Greenbrier has been very impressed with Dr. Leszek Balcerowicz, until recently Finance Minister and Deputy Prime Minister, and the architect of the financial stability that has been achieved in Poland. Dr. Balcerowicz expressed to PKP his dismay at the tender procedure for the 4500 rail cars described above.

The new Finance Minister, Jaroslaw Bauc, was a deputy minister to Dr. Balcerowicz and hopefully will continue Dr. Balcerowicz' policies. There is some concern in the financial community that Mr. Bauc was not also appointed Deputy Prime Minister as was customary with previous Ministers of Finance. We are pleased with our initial contact with Minister Bauc and look forward to working with him in the months ahead.

Another avid defender of privatization and outstanding talent is Mrs. Korniasiewicz, a Deputy Minister of the Treasury.

**C. Office of the Prime Minister:** Prime Minister Jerzy Buzek has been a strong supporter of free enterprise and adherence to principles of transparency in bidding. Mr. Buzek is said to have been re-energized by the recent reorganization of the Polish government. His strong support is expected to achieve passage by this September of needed legislation to enable privatization of PKP.

**D. Office of the President:** President Aleksander Kwasniewski is a strong supporter of American and other foreign investors in Poland. Mr. Kwasniewski's political party is SLD, the successor to the old communist party. However, as noted earlier, SLD and all the major political parties favor free enterprise, NATO membership, entry into the EU, and encouraging foreign and particularly American investment. Mr. Kwasniewski is strongly favored to be re-elected President this October.

**E. Minister of Transportation:** Mr. Jerzy Widzyk is the new Minister of Transportation. His reputation is that of a trouble-shooter, and he seems well fitted to help manage privatization of PKP. Greenbrier looks forward to working with Minister Widzyk.

Deputy Minister of Transportation, Witold Chodakiewicz, has provided fair consideration of Greenbrier issues.

Former Minister of Transportation, Boguslaw Liberadzki, who is now Vice Chairman of the Transportation Committee of the Sejm, strongly favors transparency.



## **VIII. Conclusion**

Greenbrier is very pleased with its investment in Poland. Although Greenbrier has experienced some difficulties in establishing its Polish factory, responsible Polish government officials have made Greenbrier feel welcome and have addressed problems that would otherwise discourage American investment. Poland has great potential as a nation and as a loyal ally of the United States. We look forward to expanded operations and opportunities in Poland.

In conclusion, Mr. Chairman, on behalf of Greenbrier's CEO, Bill Furman, who could not be here today because of other previous commitments, and the thousands of employees of Greenbrier, we want to extend a heartfelt "thank you" to the United States Congress and to the Administration for the superb assistance you gave to Greenbrier as it has established itself in Europe.